

From: Jose Rodriguez-Suarez [biz@jrsmail.net]
Sent: Wednesday, September 07, 2011 11:47 AM
To: Radicaciones Secretaría
Subject: JRT-2011-CCG-0002
Attachments: Complaint against AT&T - Comments on Proposed Merger.pdf

Attached please find a complaint filed on Monday September 5th which includes comments on the proposed AT&T/T-Mobile merger. I would like to add to the comments in the aforesaid complaint as follows:

When faced with arbitrary or abusive policies by wireless telecommunications companies, the ability to switch carriers is perhaps the best leverage available to consumers. This is why consumers need a competitive market that provides them with sufficient and adequate options. I have not switched from AT&T to T-Mobile in protest because, if the AT&T/T-Mobile merger were to go through, I would end-up as an AT&T customer. Moreover, if T-Mobile were to disappear, my only option for a GSM/UMTS network capable of handling simultaneous voice and data communications would be Claro (as you well know, Sprint's CDMA/EV-DO network does not handle voice and data simultaneously), and AT&T owns approximately 25% of the stock of Claro's parent company. That would not be a competitive market providing sufficient and adequate options to consumers. The fact that the proposed merger is curtailing my ability to switch carriers while pending approval, is a very clear indicator of the enormous negative impact the AT&T/T-Mobile merger would have on consumers if it were to go through.

I urge the Puerto Rico Telecommunications Regulatory Board (PRTRB) to oppose the proposed AT&T/T-Mobile merger and strongly suggest that the PRTRB contact the Puerto Rico Department of Justice and the Puerto Rico Department of Consumer Affairs regarding their willingness to join the PRTRB in opposing the merger.

Thank you for your kind attention.

José Rodríguez-Suárez
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E-mail: biz@jrsmail.net
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Jose Rodriguez-Suarez

To: Puerto Rico Telecommunications Regulatory Board (radicaciones@jrtpr.gobierno.pr)
Cc: Omar R. Melendez Roman (omar.melendez@att.com)
Subject: Complaint against AT&T Mobility | Comments on the Proposed AT&T/T-Mobile Merger
Attachments: Warranty Exchange Invoice.pdf; Original Invoice.pdf; Adjustment Form.pdf; Return Invoice.pdf

To the Puerto Rico Telecommunications Regulatory Board:

This e-mail is to submit a complaint against AT&T Mobility for refusing to honor a *Data Connect* plan with unlimited data under a valid two-year contract when substituting an AT&T wireless broadband device for a newer device of the same kind that is also locked to the AT&T network. An Adobe PDF version of this complaint is attached in case you may have difficulty viewing this e-mail.

Since it is likely that there are other AT&T subscribers in Puerto Rico that have faced, or may encounter, a similar situation, this case involves important public policy and regulatory considerations:

- (1) The rights and obligations of wireless telecommunications companies and its Puerto Rico subscribers should be governed by valid contracts under Puerto Rico law rather than arbitrary policies based on business decisions that wireless telecommunications companies may change unilaterally from time to time.
- (2) Allowing wireless telecommunications companies to use a change in device as a pretext for forcing subscribers to forfeit grandfathered data service plans may have the effect of discouraging the adoption of new technologies.
- (3) This case provides further evidence that the proposed AT&T/T-Mobile merger would be detrimental to Puerto Rico consumers. If, having a 31% share of the Puerto Rico market, AT&T Mobility aims to enforce arbitrary policies through dubious methods with the presumption that customers must either take the policies that AT&T imposes at its sole discretion or leave, customers should not expect to be treated better if AT&T were to increase its market share to 48% with the acquisition of T-Mobile.

Consumer and Company Information

Consumer

Name: José Rodríguez Suárez
Address: 400 Calle Juan Calaf PMB 90
San Juan, PR 00918-1314
Telephone: (787) 378-4448
E-mail: biz@jrsmail.net

Company

Name: AT&T Mobility
Account Number: 523032894934
Wireless Number: (787) 340-2374

Background information

I have had a *Data Connect* plan with unlimited data prior to 2008. The contract may have been originated in 2007 since I used it with a Hewlett-Packard 8510p laptop having an integrated WWAN modem that I purchased on September 2007 which was capable of accepting an AT&T SIM card.

When AT&T discontinued its unlimited data plan in January 2008 and adopted new plans with a limited amount of megabytes, it was reported that AT&T would grandfather existing data plans. At that time, my existing *Data Connect* plan with unlimited data was allowed to continue in effect.

After the previous term of the contract expired, the contract was automatically renewed on a month-to-month basis until it was extended for an additional two-year term on or around November 30, 2010. The extension of the contract involved substituting the *AT&T USBConnect Quicksilver LaptopConnect Device* that I had been using for the *AT&T MiFi 2372 Mobile Hotspot*. I had also been alternatively using the *Data Connect* plan with an Acer Aspire One netbook and an Hewlett-Packard 8530p laptop (which replaced the aforesaid 8510p) both having integrated WWAN modems capable of accepting AT&T SIM cards.

Despite the fact that the AT&T sales representative at *Best Buy* was very keen regarding the value of unlimited data plans and emphatic about having preserved mine in the process of renewing the contract, I soon discovered that the unlimited *Data Connect* plan had been inexplicably changed without my authorization to a plan having a data cap. Something happened.

It was only after devoting considerable time and effort that A&T reinstated my *Data Connect* plan with unlimited data. In this regard, I have to acknowledge the intervention of Omar Meléndez, Customer Care Team Manager PR, who elevated my case within the AT&T hierarchy and achieved a favorable resolution after several Customer Service Representatives and Supervisors in the States had firmly stated that there was nothing that could be done to reinstate the *Data Connect* plan because it was no longer in AT&T's system.

Evidence of my unlimited *Data Connect* plan is shown below. You may notice that states "Unlimited MB."

Hi JOSE RODRIGUEZ SUAREZ, welcome back. [Logout]

Shop myAT&T Support Search

Overview Bill & Payments Wireless Digital TV Internet Home Phone Messages & Email Profile My Orders Apps att.net

My Rate Plan

Account: 523032834934 787-340-2374 Rate Plan Support

Features Support

Manage Your Account

Add Features >
Pay Your Bill >
View Your Bill >
Change Your Rate Plan >
Change My Mobile Number >

Wireless Coverage Viewer
Enter your ZIP Code to see the wireless coverage in your area.
ZIP Code [View Map]
View National Map >

My Rate Plan		Included Features: View All	
Data Connect Including Unlimited MB:	\$59.99		
Anytime Minutes	N/A	AT&T Direct Bill	\$0.00
Night & Weekend Minutes	N/A	AT&T Domestic LD	\$0.00
Mobile to Mobile Minutes	N/A	AT&T Roam LD	\$0.00
Long Distance	\$0.00	GSM Coverage Area	\$0.00
Roaming Charges	\$0.00	Canada Data Roaming - Pay Per Use	\$0.015/KB
Additional Minutes	\$0.40/min	Multimedia Messages - Pay Per Use	\$0.30/MSG
Rollover Minutes	N/A		

This background information is relevant to the complaint because the manner in which AT&T has dealt with the *Data Connect* plan in my account is not an isolated case. It appears that while AT&T states that it has grandfathered unlimited data plans, it has used suspicious methods and/or pressured subscribers as part of its policy of bringing all accounts in line with data usage caps unless a customer is sufficiently assertive and persistent in claiming his or her rights. Some

subscribers are successful while others are not which sends mixed messages and generates confusion among consumers.

User forums provide many reports of AT&T subscribers that have encountered problems keeping their unlimited data plans. Following are some examples:

- “BEWARE AT&T iPad Scam: Trick to dishonor grandfathering unlimited plan” - <http://forums.macrumors.com/showthread.php?t=935556>
- “Why did I lose my grandfathered unlimited data plan?” - <http://forums.crackberry.com/t-cingular-f68/why-did-i-lose-my-grandfathered-unlimited-data-plan-536470/>
- “AT&T trying to scam me out of my unlimited data package with T2 upgrade??” - <http://forums.crackberry.com/blackberry-torch-9810-f236/t-trying-scam-me-out-my-unlimited-data-package-t2-upgrade-641017>

In a *Washington Post* article entitled “HELP FILE: AT&T hangs up on old unlimited wireless-data plans” (<http://www.washingtonpost.com/wp-dyn/content/article/2010/07/24/AR2010072400133.html>) Jenniffer Clark, a publicist for AT&T was quoted as follows:

“Clark added that users who had signed up for AT&T's earlier Data Connect Unlimited plans (which it stopped selling in 2008) could keep using them, but if they made “certain changes to their account” -- for instance, transferring it to a new line -- they would have to sign up for a new \$60 plan with a 5-gigabyte usage cap.”

After conducting research by means of a popular Web search engine, I have not been able to find any clear guidelines regarding which changes to an account may result in an AT&T subscriber losing an unlimited data plan. This may be, perhaps, because clarity is what AT&T has been seeking to avoid. The author concluded the article by cautioning readers as follows:

“Users with old, unlimited-data plans should be prepared for lengthy calls to customer service -- and keep careful records of their interactions with the company.”

Facts of the Complaint

On August 24th I purchased the *AT&T Mobile Hotspot Elevate 4G* at an AT&T kiosk located at San Patricio Plaza for which I paid the full “no commitment” price. Since the LCD display failed within minutes of connecting the device to the AC adapter, the next morning I replaced the device at the main AT&T store located at Ortigón Street in Guaynabo.

Upon trying, unsuccessfully, to use the new wireless broadband device on August 25th, a Customer Service Representative, a Customer Data Support Representative, and a Customer Service Supervisor with whom I spoke over the phone provided similar explanations to those delivered by AT&T representatives on December 2010 after I renewed the contract replacing the *AT&T USBConnect Quicksilver LaptopConnect Device* with the *AT&T MiFi 2372 Mobile Hotspot*.

They insisted that the unlimited data plan that I have is no longer in AT&T's system and that changing my existing device for a new device requires that I switch to a new plan which provides a limited amount of data per month because, allegedly, my plan is not compatible with the new device. Neither the AT&T Sales Support Representative who sold me the device nor the AT&T Sales Support Representative who exchanged it cautioned me that activating the *AT&T Mobile Hotspot Elevate 4G* required that I forfeit my unlimited *Data Connect* plan.

Furthermore, AT&T's website does not provide any indication of the need to change plans when upgrading from the MiFi 2372 to the Mobile Hotspot Elevate 4G. You may notice that the checkout page shown below makes reference to "My Existing Plan" —that is, the unlimited *Data Connect* plan.

SELECT DEVICE

PLANS & FEATURES

CHECKOUT

Account Number: 1058 RODRIGUEZ SUAREZ Account Number: 502122 894704

SHIPPING:

Contact Information:
JOSE RODRIGUEZ SUAREZ
787-333-3726
jrs@rodriguez.net

Shipping Address:
JOSE RODRIGUEZ SUAREZ
400 CALLE CALAF
SAN JUAN, PR 00911

Shipping Method:
Free Priority Shipping (2 days)

If you would like to provide new contact information or a new shipping address, click [here](#).
If you would like to make a change to your existing contact information or shipping address, click [here](#).

BILL & PAYMENT

ONE TIME PAYMENT INFORMATION

Payment Type: **Select Card Type**

Credit Card

Billing Address: **400 CALLE CALAF**

Name as it appears on card: **JOSE RODRIGUEZ SUAREZ**

Card Number:

Card Security Code:

Expiration Date: **January** **2010**

Use new address:

Address Line 1:

Address Line 2: **Enter USA in Address 1**

City:

State:

ZIP Code:

If using a debit card, please note funds in the amount of this purchase may be immediately held and not available for other use. Debit card transactions may not appear in your account until after shipment.
Depending upon a number of factors (including chosen method of shipment and shipment timing), you may be charged for service before you receive your new device.
We have the highest regard for your privacy; the information you provide will be kept secure. For further details, review our [Privacy Policy](#).

ORDER SUMMARY

ONE 1: JOSE RODRIGUEZ SUAREZ 7873333726

Remove

Coverage Area: **PR17 (SAN JUAN)**

Monthly

One Time

Device: **AT&T Mobile Hotspot Elevate 4G***

Plan: **My Existing Plan**

Service: **N/A**

Change

\$269.99



You have chosen to upgrade your device with no-commit pricing. Please note, SIM cards are not included with no-commitment orders. If you need a new SIM card, please place your order at a store near you, or by phone at 1-888-333-6681.

Efforts to arrive at a solution

Following the telephone conversation with a stateside Customer Service Supervisor, during the evening of August 25th I sent an e-mail to Omar Meléndez Román, Customer Care Team Manager PR, asking him to please exert his good offices so that the problem with the activation of the Elevate 4G Mobile Hotspot device could be brought to a satisfactory outcome. On Monday August 29th I was able to reach Mr. Meléndez Román on the phone. In essence, he reiterated what the Customer Service Supervisor had said and stated that there was nothing that he could do. Furthermore, he suggested that I could either continue using the MiFi 2372 or terminate my account. Despite the finality of the position that Mr. Meléndez Román communicated, in a follow-up email sent during the same day, I left the door open for AT&T to reconsider its position. I wrote as follows:

"I would appreciate a written reply to my e-mail in order to file a formal complaint before the Puerto Rico Telecommunications Regulatory Board. In replying to my e-mail, please elucidate on the justification for AT&T's policy of denying the continuation of a grandfathered unlimited plan when a data device is upgraded —in my case, upgrading from the MiFi 2372 3G Mobile Hotspot to the Elevate

4G Mobile Hotspot— while allowing the continuation of a grandfathered unlimited data plan when a smartphone device is upgraded —such as when upgrading from the 3G BlackBerry Torch 9800 to the 4G BlackBerry Torch 9810.”

AT&T did not reconsider. Mr. Meléndez Román has not replied to either e-mail. The reason might be, as explained below, that AT&T’s arbitrary policy regarding the continuation of unlimited data plans would be indefensible before any regulatory body.

An arbitrary policy


In contrast to wireless broadband devices, AT&T’s policy regarding the continuation of unlimited data plans with smartphones is straightforward and has been publicly stated as shown below.

Home / Wireless Forums / Phones and Devices / General Device Support / Clarification on the New Smartphone Data Plans!

General Device Support

Topic Options ▾

◀◀ Message Listing ◀ Previous Topic Next Topic ▶▶

 **Caretaker**
Moderator Emeritus



Posts: 1,242
Registered: 01-29-2007



Clarification on the New Smartphone Data Plans!

06-10-2010 10:15:45 AM

Options ▾

As many of you already know, existing Smartphone customers who already have a Smartphone data unlimited plan on their account will be allowed to keep their existing data plan should they choose, even if upgrading their device to another Smartphone; this includes ALL Smartphone Operating Systems such as iPhone, BlackBerry, Android, Windows Mobile, webOS and Symbian. So, if you currently have a smartphone, such as a BlackBerry and would like to upgrade/switch to another smartphone like an iPhone, you can do so without losing your current Smartphone data unlimited plan.

For more information on the New Smartphone Data Plans, check it out [here](#).

Source: <http://forums.wireless.att.com/t5/General-Device-Support/Clarification-on-the-New-Smartphone-Data-Plans/td-p/1938811>.

Pursuant to the aforesaid policy, AT&T is allowing its subscribers to upgrade from the 3G BlackBerry Torch 9800 to the 4G BlackBerry Torch 9810 without changing their unlimited *BlackBerry Personal* data plans. One would naturally infer that customers would also be allowed to keep their existing unlimited data plans when upgrading their wireless broadband devices to another such device —such as the 3G MiFi 2372 to the 4G Elevate.

Although a wireless broadband device is not the same as a smartphone, the same logic or reasoning should apply to all unlimited data plans, which is: a change in device will not cause a subscriber to lose an unlimited data plan provided that it is the same kind of device. Therefore, given that AT&T would allow a subscriber having a smartphone with an unlimited data plan to change it to any other smartphone and keep the unlimited data plan, AT&T should also allow a subscriber having a wireless broadband device with an unlimited data plan to change it to any other wireless broadband device and keep the unlimited data plan —at least if AT&T were to be consistent rather than arbitrary.

The pretext of incompatibility

One of the pretexts used by AT&T representatives for not activating the Elevate 4G Mobile Hotspot with my unlimited *Data Connect* plan was that the Elevate 4G Mobile Hotspot was a new device having 4G/LTE capabilities and therefore incompatible with my plan. The word “compatibility” suggests a hardware or software issue of a technical nature beyond the control of AT&T but the so-called incompatibility is actually the creation of AT&T. How service plans are structured, and to which devices the plans are applicable, are the result of business decisions. When AT&T released the Elevate 4G Mobile Hotspot it could have included in the *Data Connect* plan the provisioning necessary to activate the new device but chose not to do so thereby impairing or limiting the continuation of the unlimited *Data Connect* plan under a valid contract. In contrast, AT&T allowed its subscribers to upgrade from the 3G BlackBerry Torch 9800 to the 4G BlackBerry Torch 9810 without changing its unlimited *BlackBerry Personal* data plan to a capped plan.

Adding insult to injury

On Tuesday August 30th I went to the AT&T Store at Ortegón Street to return the Elevate 4G Mobile Hotspot device that AT&T sold to me without providing any notice or warning regarding the need change plans and which AT&T refused to activate.

The position of the Sales Support Representative and the initial stance of a Supervisor were that it is the policy of AT&T to apply a restocking fee on returns and that it could not be waived regardless of the circumstances. After spending some time explaining my situation and presenting the reasons why I was entitled to a waiver of the restocking fee, Juan Carlos Padilla, a Sales Support Supervisor, applied the restocking fee but had the initiative and good sense of also applying a credit to my account in the amount of the restocking fee. However, it took assertiveness and persistence to get from AT&T, as a presumed courtesy (the Adjustment Form reads “crédito por cortesía”), the full refund to which I was clearly entitled.

The day before I had faced AT&T’s presumption that customers must either take the policies that AT&T imposes at its sole discretion or leave. And then I encountered AT&T’s audacity in imposing a fee for doing precisely what AT&T had forced me to do. This can only be described as corporate arrogance.

Unfortunately, helpful employees such as Messrs. Padilla and Meléndez Román have no choice but to abide by arbitrarily made, and rigidly applied, policies in which the loyalty of long-time customers is disregarded. Given my recent experience with AT&T, I have not switched to another carrier only because I cannot anticipate how the proposed AT&T/T-Mobile merger will affect the wireless telecommunications landscape in Puerto Rico. But when companies treat customers with the arrogance that AT&T has been showing lately, it is only a matter of time before they leave for the competition. However, in order to do so, the wireless telecommunications market must provide consumers with adequate and sufficient options.

Attached you will find copies of the purchase, exchange and return invoices as well as a copy of the Adjustment Form by which the account credit was made.

Bearing on the proposed AT&T/T-Mobile merger

I have been a customer of AT&T Mobility since it acquired Cingular Wireless. And prior to Cingular Wireless acquiring Cellular One I was a customer of Cellular One since it started operations in 1991. Being a long-time customer provides me with the perspective to discern how the level of customer service provided by AT&T in Puerto Rico has recently deteriorated. This may be related to AT&T’s takeover of Centennial by which AT&T increased its share of the market while debilitating Sprint’s ability to compete. Prior to the takeover of Centennial, AT&T strived to keep its customers satisfied. Lately, AT&T has become inflexible in the application of policies that disregard the loyalty long-time customers. If with a 31% share of the market AT&T exhibits the corporate arrogance described above, one should not expect AT&T to afford Puerto Rico consumers a better treatment if its market share were to increase to 48% after the acquisition of T-Mobile.

Requested Remedies

- (1) Order AT&T Mobility to include in all existing *Data Connect* plans with unlimited data the provisioning necessary for enabling subscribers having such plans to use the Elevate 4G Hotspot and all future wireless broadband devices sold by AT&T in Puerto Rico.

- (2) Conduct an investigation regarding the possible involuntary loss of grandfathered *Data Connect* plans by AT&T subscribers in Puerto Rico.

The need for action

Over time individual consumers have seen their leverage reduced when confronted with abusive and/or arbitrary policies implemented by wireless service providers. With the acquisition of Centennial by AT&T, the number of carriers has been reduced. Progressively higher early termination fees force many subscribers to continue with their service providers when they would have otherwise switched carriers in protest. And, the U.S. Supreme Court has recently decided a major case that puts an end to consumer class action suits when a contract includes a forced arbitration clause. Now, more than ever, consumers need the intervention of the Puerto Rico Telecommunications Regulatory Board.

Notice

By a copy of this e-mail to Omar Meléndez Román, Customer Care Team Manager of AT&T in Puerto Rico, I am giving notice to AT&T Mobility of the filing of this complaint.

Thank you for your kind attention.

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